IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 585 of 1987
Date of decision 30.8.2006

Faqir Singh and others Appellants

Versus

Murari Lal and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Harminder Singh, Advocate,for the appellant
Mr.RM Suri, Sr. Advocate with
Mr. Sandeep Suri, Advocate for respondent no.3
Mr. H.S.Gill, Sr. Advocate
with Mr. R.K.Dhiman, Advocate for respondent no.2.

M.M.Kumar, J.

This appeal filed under Section 100 D of the Motor Vehicles Act, 1939 (for brevity 'the Act') challenges the award dated 28.3.1987 passed by the Motor Accident claims Tribunal, Rohtak (for brevity 'the Tribunal'). In respect of the issue as to whether the accident was caused due to rash and negligent driving of the offending truck by Murari Lal-driver respondent no.1, the Tribunal has come to the conclusion that the accident had taken place due to rash and negligent driving of both the vehicles and both of them were equally responsible. It has further been held that the total annual income of the deceased was Rs.35,120/- which is rounded of to Rs. 35,100/- and deduction of Rs. 11,700/- towards his personal expenses has been made. The total annual income has been found to be Rs. 23,400/-. A multiplier of 16 has been applied by keeping in view the age of the deceased who was 30 years old. A total compensation of Rs. 3,74,400/- has been worked out. On account of the contributory negligence on the part of the

deceased a cut of 50 percent has been imposed and the total compensation has been found to be Rs.1,87,200/-. Accordingly, the claimant- appellants have been awarded the afore-mentioned amount by holding all the respondents liable jointly and severally. The liability of the insurance company has been kept to the extent of Rs.1,50,000/-. The claimant -appellants have been held entitled to interest @ 12 percent p.a. w.e.f. 28.1.1986 the date of filing of claim petition till the realisation of the amount. An amount of Rs.10,000/- each has been apportioned in favour of Faqir Singh, appellant no.1 and Smt. Ranjit Kaur and Rs. 20,000/- each to Gurmit Singh and Ranchat-the minor children of deceased Ranjit Singh. Kulbir Kaur the widow of Ranjit Singh has been awarded the rest of the amount.

On issue no.1, the Tribunal has discarded the version of the claimant- appellants and their witnesses. A perusal of the record shows that the accident has taken place on 23.8.1995 at about 11.40 AM at a distance of 8 kms. from Police Station , Sampla on Rohtak-Delhi road. An FIR was recorded at 12.10 PM and Murari Lal, driver- respondent no.1 was alleged to have committed the offence under Section 304 A IPC. The FIR is on record as Ex.PB. The earliest version recorded in the FIR would indicate that the truck bearing registration No. RSC 8292 was being driven rashly and negligently by Murari Lal, driver- respondent no.1 had hit the car bearing registration no. DIC 251 driven by deceased Ranjit Singh which was reduced to pieces. It has also been pointed out in the FIR that the truck had dragged the car approximately upto a distance of 50 yards. As a result, the driver of the car, namely Ranjit Singh, died on the spot. The afore-mentioned version unfolded in the FIR has been corroborated in material

particular and in details by Head Constable Jagpal Singh, PW 3 and Constable Rajbir Singh PW 6. These two police officials have deposed that they alongwith other constables were going to their village Chulana on their respective bicycles. After covering a distance of about 8 kms. from Sampla the car in question crossed them at a normal speed and in the meanwhile the offending truck came from the side of Rohtak at a very fast speed. It struck against the car which was going on its correct side at a normal speed. The truck dragged the car upto a distance of about 50 yards. The car was completely damaged and the driver of the car had expired on the spot. Head Constable Jagpal Singh further deposed that he prepared the writing regarding the accident and send the same to the police station for registration of the case which is Ex.PB. He has also prepared rough site plan of the place of the accident. A certified copy of the same has been placed on record as Ex.PC. He arrested driver- respondent no.1 Murari Lal at the spot. He has also stated that the accident took place at about 11.00/ 11.15 AM. It is thus obvious that FIR was recorded with promptitude before there was any opportunity for any coloured version. It is well settled that a prompt FIR corroborated by its author and other evidence can be safely relied upon.

The respondents have admitted the accident yet it was alleged that it was the rash and negligent driving of the car by the deceased and not that of Murari Lal, driver- respondent no.1. Apart from the appearance of Murari Lal as RW 3, owner of the truck Om Parkash had also appeared as RW 1. In addition, one Diwana Ram RW 2 was also examined who was the owner of the goods (Gram bags) which were being transported on the truck at the relevant time. Their version is that the offending truck was proceeding towards Delhi at a normal speed. The car in question was coming at a very

fast speed. They have further stated that one cow suddenly appeared on the road and in order to save the cow, the deceased car driver swerved his car towards right hand side of the road. On account of excessive speed of the car he was not in a position to control it and struck against the right side of the truck. The theory of appearance of cow on the road has been discarded by the Tribunal itself for the reason that there has been no mention of such a fact in the written statement and non-mentioning of the aforementioned fact has led the Tribunal to reach the conclusion that there was no truth in this plea and it has been devised as an after-thought in order to create defence. The Tribunal has reached the afore-mentioned conclusion in para 10 by observing as under:

> " From the above it comes out that when the accident in question took place no cow etc. was on the road...."

Despite the afore-mentioned conclusion, the Tribunal proceeded to discard the statement of HC Jagpal Singh, PW 3 and Constable Raj Singh PW 6 which were quite consistent with the version given in the FIR by observing that the witnesses had seen the accident from the distance of 60-70 yards and it was not expected that those witnesses could minutely give details of the accident or the circumstances under which it took place. In para 11, the Tribunal has also noticed that Delhi-Rohtak- Hisar Highway is sufficiently wide for passing of three vehicles side by side simultaneously . It is surprising that the vehicles have hit each other on their respective right side which cannot be a factor for recording the conclusion that both the drivers were equally negligent. The ocular version of Jagpal Singh PW 3 that truck was being driven in the middle of the road and was on the wrong side has been discarded by the Tribunal by

exhorting the driver 'that he could very easily avoid hitting the truck by taking his car towards left hand side'. Such an observation of the Tribunal is wholly irrelevant to the issue under consideration. Further reasoning of the Tribunal that both the vehicles according to the site plan Ex.PC have been shown to be standing on their respective left side of the road and their distance was not considerable cannot lead to an inference that both the vehicles were about to collide with each other and both the drivers of the vehicles had turned towards left hand side and in that process their front right side struck against each other. The afore-mentioned analysis of evidence is not only conjectural and imaginary but it goes against the express statement made by the eye witnesses which version is whole heartedly supported by other witnesses as well as the version disclosed in the FIR, which was promptly lodged. Therefore, I have no doubt in my mind that the Tribunal has committed a grave error in appreciating the evidence in the afore-mentioned manner. The FIR alongwith the statement made by PW 3 HC Jagpal Singh and PW 6 Constable Raj Singh leads to only one conclusion that driver- respondent no.1 was driving the vehicle rashly and negligently and had dragged the car to a distance of 50-60 yards. As a consequence of impact of the accident the car was reduced to pieces and the deceased was done to death. It is unfortunate that the Tribunal has adopted an approach which defies ignorance at the cost of those who have lost their bread winner and earning member of the family at his prime age of 30 years.

In view of the above, the findings of the Tribunal on issue no. 1 are reversed and it is held that driver- respondent no.1 who was driving the offending truck was rash and negligent and on account thereof the accident

has been caused. Once the findings on issue no.1 are reversed then the whole amount calculated by the Tribunal amounting to Rs. 3,74,400/- becomes payable to the claimant- appellants. As there was no contributory negligence on the part of the deceased Ranjit Singh, driver of the car. The apportionment of the amount shall be in the same proportion as has been given by the Tribunal and the rate of interest shall also be the same. The other directions given by the Tribunal with regard to depositing the awarded amount in the account of the minors however, are modified as the minors must have attained majority by now and therefore, the amount be paid to the claimant- appellants. The liability of the insurance company shall continue to be limited to Rs.1,50,000/- as has been held by the Tribunal. However, the amount shall be paid by the Insurance Company to the claimant- appellants which can be realised by the respondent- insurance company from the other respondents.

(M.M.Kumar)
Judge

30.8.2006
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